IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6482 of 2007
With
SPECIAL CIVIL APPLICATION No. 8968 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHRUTBANDHU H. POPAT - Petitioner(s)
Versus
STATE OF GUJARAT & 299 - Respondent(s)

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Appearance :
MR TUSHAR MEHTA for Petitioner(s) : 1,
MR MIHIR JOSHI ADDL. ADVOCATE GENERAL with MS TRUSHA PATEL ASST. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 5.
MR BS PATEL for Respondent(s) : 4 - 5.
MRS RANJAN B PATEL for Respondent(s) : 4 - 5.
DS AFF.NOT FILED (N) for Respondent(s) : 6,
MR PS CHAMPANERI for Respondent(s) : 6 - 7.
NOTICE NOT RECD BACK for Respondent(s) : 7,
None for Respondent(s) : 8 - 300.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 11/05/2007
CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

These petitions under Article 226 of the Constitution challenge the resolution dated 20.1.2007 passed by the Agricultural Produce Market Committee, Kalavad (for brevity “APMC” or the Market Committee”) for granting trader's licences to 293 persons which would have the effect of including them in the voters' list for constituency called the traders holding general licences under clause (ii) of sub-section (1) of Section 11 of the Agricultural Produce Market Committee Act, 1963 (for brevity “the Act” or “the APMC Act”).

The petitioners have mainly contended that the new licences were issued in a surreptitious manner on 20.1.2007 after the Director of Agricultural Marketing and Rural Finance, Gujarat State decided on 10.1.2007 to declare the election program for elections to APMC, Kalavad and the election program was declared on 18.1.2007. It is contended that the issue of licences was not only contrary to the statutory provisions of the APMC Act and the Rules but was also done on such a large scale as to subvert the democratic process by creating artificial majority for the Chairman of the outgoing Committee.

2. The facts leading to filing of these petitions, briefly stated, and as averred by the petitioners are as under :-

2.1 Respondent No.4 - APMC, Kalavad is a market committee constituted under the provisions of the APMC Act. The petitioners are traders holding general licences in the area of the APMC, Kalavad. No person can do business as a trader in the area of the APMC without obtaining a licence under Section 27 of the Act read with Rule 56 of the Agricultural Produce Market Committee Rules, 1965 (for brevity “the Rules”). Different kinds of licences are being issued under the said Rules. The four year term of the APMC is going to be over in June 2007. Out of the 14 elected

members in APMC Kalavad, 8 elected members are not supporting the Chairman of the APMC (respondent No.5) who continues to retain power with the support of five other elected members and three other nominated members (two nominated by the State Government). The Deputy Director and District Registrar, Cooperative Societies who is also a member of the APMC sent the proposed election program to the Director of Agricultural Marketing and Rural Finance by letter dated 10.1.2007 (Annexure A). The Deputy Director and District Registrar of Cooperative Societies (respondent No.3), who is one of the members nominated by the State Government with whose support respondent No.5 is continuing to hold the office of Chairman of the APMC, appears to have informed respondent No.5 about the proposed election program and, therefore, hurriedly and surreptitiously a meeting of the licence sub-committee of the APMC came to be convened on 20.1.2007 vide agenda notice dated 13.1.2007. In the meantime, the Director of Agricultural Marketing and Rural Finance had already issued the election program on 17.1.2007 and sent the same to the APMC on 18.1.2007 (Annexure B). Between 13.1.2007 and 20.1.2007, the APMC started collecting applications for grant of licences from persons who are not genuine traders and most of whom are related to respondent No.5 – the outgoing Chairman of the APMC. At the meeting of the licence sub-committee held on 20.1.2007, Resolution (Annexure C) was passed for granting fresh licences to the applicants in the following categories :-

“A” class General licences	– 52 new licences
“B” class General licences	– 56 new licences
Vegetable Vendors' A class general licences	- 185 new licences

2.2 The traders' licences are issued for one year and the petitioners have given following particulars to show the number of licence holders in the disputed categories in the previous years and

the sudden jump in the number of licences given after 10.1.2007.

		2003-04	2004-05	2005-06	2006-07		Total for year 2006-07
					01.4.06 to 10.1.07	On 20.1.07	
1.	A Class gen. Licences	284	264	283	172	52	224
2.	B Class gen. Licences	10	10	08	07	56	63
3.	Vegetable Vendors' A class gen. Licences	76	92	86	77	185	262
		360	366	381	256	293	629

2.3 It is also the petitioners' case that though the resolution of the licence sub-committee states that the applications were received between 25.8.2006 and 20.1.2007, the applications were actually received after 13.1.2007 and that the application fees for getting licences were also deposited after 13.1.2007. This statement is sought to be supported with the balance-sheets of the APMC for the month of December 2006 (no licence fee is received) and January 2007 (licence fees of Rs.33,245/- received) annexures E and F respectively. On the basis of the above resolution dated 20.1.2007, the APMC Kalavad issued licences to 293 persons over and above the 336 persons who were already granted the general licences for traders for all the six categories under Rule 56 for the constituency No.(ii). Their names were included in the preliminary list of voters sent by the APMC to the Election Officer – Cooperative Officer in the office of the District Registrar of Cooperative Societies, Jamnagar (respondent No.4) on 06.03.2007. Hence, Special Civil Application No. 6482 of 2007 came to be filed on 9.3.2007. For the first time the petitioners came to know about issuance of licences to 293 persons and their inclusion in the list

sent by the APMC.

3. After the preliminary voters' list was published on 13.3.2007, the learned Single Judge of this Court granted ad-interim stay on 14.3.2007 and referred the matter to a larger Bench after making the following observations :-

> "Mr. Patel, learned counsel for the Market Committee and the Chairman of the Market Committee submitted that the affected parties are not joined. The request is reasonable, hence, the petitioner is directed to join the persons who are beneficiaries of the resolution of the Market Committee.
>
> Upon hearing Mr. Mehta for the petitioner, Mr. Sunit Shah, learned GP for respondent Nos. 1, 2 & 3, and Mr. Patel for respondent Nos. 4 & 5, it prima facie appears that the sanctity and purity of the election would be disturbed, if the body in power who has to face the election grants new licenses, resulting into creating an atmosphere of artificial majority.
>
> Mr. Sunit Shah, learned GP, during the course of hearing submitted that the appeal is preferred by one Salim Mamadbhai & Iqbal Jusabbhai Kacchi before the Director, Agricultural Marketing and Rural Finance, challenging the legality and validity of the resolution passed by the Market committee for grant of the license on the eve of the election. However, the Director has passed the order of issuing notice returnable on 16th March, 2007 and the matter is pending.
>
> As such, the aspects of the legality and validity of the Resolution and the license granted, will be considered after the reply is submitted by the other side. But from the list, which has been submitted during the course of the hearing by Mr. Mehta, it prima facie appears that about 40 persons granted licences are close relatives of the Chairman of the Market Committee. Hence, until further orders, the operation of the Resolution dated 20.01.2007 passed by the Market Committee shall remain stayed and suspended.
>
> S.O. to 28th March, 2007.
>
> It is made clear that the pendency of this petition shall not operate as a bar to the Director in taking appropriate decision in accordance with law in the proceedings of the Appeal. However, the decision, if any, shall not be

implemented without the leave of this Court.

Mr. Patel for respondent Nos. 4 & 5 also submitted that any order passed by this Court may affect the process of the election. In my view, the resolution is only under challenge and the consequence that may ensue would follow.

The Government Pleader shall communicate the order to the concerned authority."

The learned Single Judge also expressed the view that the matter deserved consideration by a larger Bench and that is how the matter was placed before us. All the affected parties i.e. all the 293 persons who were granted licences by APMC on 20.1.2007 were joined as party respondents and they were served through a public notice published in two leading newspapers having wide circulation in the area i.e. Divya Bhasker Rajkot edition and Fulchhab. With the consent of the learned counsel for the parties, the petitions were finally heard and are being disposed of by this judgment.

4. We have heard Mr Shirish Joshi with Mr Baiju Joshi and Mr Tushar Mehta for the petitioners, Mr Mihir Joshi, learned Additional Advocate General instructed by Ms Trusha Patel, learned AGP for the State of Gujarat, Director of Agricultural Marketing and Rural Finance and the District Registrar of Cooperative Societies as well as for the Election Officer i.e. Authorised Officer & Cooperation Officer (Marketing) in the office of the District Registrar, Cooperative Societies, Jamnagar, Mr BS Patel for APMC, Kalavad and its Chairman and Mr Champaneri and Mr DB Rana for the respondents who were issued licences as per the impugned resolution dated 20.1.2007.

5. Mr Shirish Joshi and Mr Tushar Mehta for the petitioners have urged the following contentions :-

(i) Under the Scheme of the Act and Rules particularly under Section 27 and Rule 56 a licence can be granted only after a person makes an application in the prescribed form with all the details indicating his desire to do business in the specified commodities, the APMC is supposed to make due inquiry about the solvency of the applicant and about his place of business and whether his operations in the market area are likely to further the efficiency in the working of the market. All such inquiries are expected to consume some time and only after proper verification, such applications can be considered by the licence sub-committee for recommending grant of licences and thereafter the APMC itself must pass a resolution for granting licences.

In the instant case, the procedure prescribed by the Act and the Rules has not been followed. In fact the petitioners and others came to know about surreptitious grant of such licences only when the APMC sent the list to the Election Officer on 13th March 2007 and, therefore, they were constrained to file the present petitions.

(ii) It is submitted that the statutory provisions for holding elections to APMC and particularly the provisions of Rule 28 providing for the remedy to challenge elections to APMC do not confer any jurisdiction on the Election Tribunal to decide the question of legality and validity of the licences issued by the APMC and, therefore, the petitioners do not have any efficacious alternative remedy to challenge the malafide action of the Chairman of APMC who does not enjoy the majority of

elected members of the APMC and who continues to hold the office of Chairman only with the support of three nominated members (two nominated by the State Government) in inflating the number of voters by as many as 293 as against 336 existing licence holders prior to issuance of the election program.

(iii) the remedy of filing election petition before the Director of Agricultural Marketing and Rural Finance under Rule 28 of the APMC Rules, 1965 is no remedy, much less equally efficacious remedy compared with the remedy of pursuing the present petitions before this Court under Article 226 of the Constitution. The Election Tribunal hearing the election petition to be filed after declaration of results of election of APMC will only examine the legality or inclusion of persons named in the list of traders holding general licences and once the voter is shown to be holding the general licence for traders, the Election Tribunal will have no jurisdiction to hold any further inquiry. When the general licences for traders are granted by the APMC on the eve of elections or after declaration of the date of elections to APMC, the other persons in the APMC like the genuine traders carrying on their trade within the APMC area and already holding general licences never come to know about grant of such licences to non-bonafide persons until the primary list of voters is published and they are given only 14 days' time to lodge their objections against illegal inclusion of persons in such list.

It is also submitted on behalf of the petitioners that since the names of the licence holders granted on

the eve of elections are made known only at the time of publication of preliminary list of voters, no time is left for the genuine traders to challenge the grant of such licences because first a complaint will have to be made to the same APMC which has granted the licence on incomplete or incorrect material and when the APMC does not take any action on such complaint, the aggrieved person has to approach the Director under sub-section (4) of Section 27. All this process is bound to be time consuming and 14 days period between the date of publication of the preliminary list of voters and the date of lodging objections will never be sufficient to get this process completed at the hands of the authorities over which the petitioners have no control whatsoever. It is, therefore, submitted that the provisions in the Act and the Rules for preparation of the voters list for the constituency of traders holding general licences cannot be read in isolation and dehors the relevant provisions in the Act and the Rules regarding grant, renewal, refusal or cancellation of general licences for traders. It is vehemently submitted that if the relevant provisions of the Act and the Rules are not harmoniously construed, the outgoing office bearers of the APMC will get a licence to grant such large number of licences not only to the persons applying without genuine desire or with complete information but also by giving them the power to obtain applications from persons not really carrying on any trade or having any genuine desire to carry on trade but only because they are either related to the outgoing members or because they promise to vote at the elections in favour of the outgoing office bearers of the APMC. It is submitted that if this is permitted, there

will not be any genuine democracy but only manipulations to project artificial majority of the outgoing office bearers of the APMC. Since votes are cast by secret ballot, it will never be known as to in favour of which candidate a person has voted when ultimately that person is found to be ineligible for voting, if at all any such finding could be given and were to be given by the Election Tribunal.

(iv) It is also submitted that this Court may construe the provisions of the Act and the Rules so as to further democratic principles and that for this purpose it is also open to this Court to pass appropriate orders to restrain the persons granted licences after issuance of the election notification from participating in the elections. Strong reliance is placed on the decision of the Apex Court in Election Commission of India vs. Ashok Kumar, 2000 (8) SCC 216 and particularly on the observations made in paragraph 28 and and principles laid down in paragraph 32 of the said decision. It is submitted a conscientious approach with overriding effect for strengthening democracy justifies judicial intervention and that this Court would not turn a blind eye to the above glaring facts which have clearly emerged from the record.

(v) Apart from giving the comparative figures of the licences in the disputed categories of traders granted by the APMC in the previous three years (2003-04 to 2005-06) as compared to the licences granted before the date of declaration of the elections on 10.1.2007 and the licences granted by the licence sub-committee on 20.1.2007 (quoted in para 2.2 hereinabove), the

learned counsel for the petitioners have also heavily relied on the report submitted by a team of Government officials which was submitted to the District Registrar on 23.3.2007 and the report dated 29.3.2007 of the District Registrar of Cooperative Societies, Jamnagar to the Director of Agricultural Marketing and Rural Finance highlighting that all the 185 persons granted licences in the category of vegetable vendors A class general had obtained such licences for the first time on 20.1.2007 and that none of them had obtained such a licence in the previous years i.e. 2004-05 or 2005-06. It was also highlighted in the said report dated 23.3.2007 that out of the 108 persons granted licences in the category of food grain traders (A and B class general licences) on 20.1.2007, as many as 94 persons were granted licence for the first time and only remaining 14 persons had eralier obtained licence in the year 2004-05 or 2005-06. The other contents of the said report were also brought to the notice of this Court in support of the petitioners' case that the persons to whom trader's licences were granted as per the impugned resolution dated 20.1.2007 were not bonafide applicants and genuine traders but applications were obtained from a large number of persons by the gate clerk or the daily wager clerk of the Market Committee without such applications having been received by or scrutinized by the Inspectors of the Market Committee. Many of the applications for licences were incomplete without complete addresses and without the names and signatures of witnesses. A large number of applications were received on the same date and were filled in in the same handwriting. The gate clerk purported to have submitted a report dated 20.1.2007 about alleged

scrutiny of the applications for traders licences without obtaining any information about the trade and occupation in the previous years or about any other particulars of the applicants. The District Registrar had concluded that a large number of applications were received in the same period and the procedure for scrutiny and approval of applications and grant of licences reveal lack of care.

(vi) Reference is also made to the order dated 4.4.2007 passed by the Election Officer for continuing the names of 293 licence holders in the list of voters, subject to the stay of the licensing sub-committee resolution dated 20.1.2007 granted by the learned Single Judge on 14.3.2007 and also to the final list of voters published on 13.4.2007 with the names of 293 licence holders in the final list of voters in spite of non-approval by the APMC of the impugned resolution dated 20.1.2007 of the licensing sub-committee. It is contended that all these events show mala fides on the part of respondent No.5 as well as the election authority to help respondent No.5 to retain the control over the APMC by subverting the election process.

(vii) Reliance is also placed on the following observations made by the learned Single Judge of this Court in Valsad Dist. Central Cooperative Bank Ltd. vs. State of Gujarat, 2003 (2) GLH 459 :-

> "It is a hard reality and perhaps it would not be out of place to take judicial notice of the things happening in such cooperative societies, which are treated as root-level power points that whosoever, any particular group or body, comes to power, realises that certain class of certain

> voters are not going to support at the ensuing election then such group or body in power with a view to see that the genuinely interested class is put into minority, new societies which are rather in the nature of dummy cooperative societies or which are not in any manner interested in the management of the Bank are admitted as members and as a result thereof the number of voters of such type societies would be more in comparison to the societies, which are genuinely interested in the management of the Bank and a consequence thereof, the atmosphere of majority is being created."

6. Mr BS Patel, learned counsel for the APMC, Kalavad has opposed the petitions and submitted that with the publication of the voters' list the election process has commenced and, therefore, this Court has no jurisdiction to entertain the petitions. Strong reliance is placed on the decision of a Full Bench of this Court in Daheda Group Seva Sahakari Mandali Ltd. 2006 (1) Gujarat Current Decisions 211.

Heavily relying on the said decision of the Full Bench, the learned counsel for the APMC has submitted that the language of Rule 28 is wide enough to empower the Election Tribunal to entertain all kinds of disputes pertaining to the elections and that it is open to the petitioners to challenge before the Election Tribunal inclusion of the persons named in the voters list on whatever ground they want to challenge such inclusion, but after the elections are held. It is submitted that there is a complete bar to any interference with the election process once the election process has commenced.

It is further contended that once an application is received for grant of licence, the APMC is merely required to verify the identity of the applicant and no further inquiry is necessary and that the APMC was justified in issuing all the 293 licences as per

the resolution of the licence sub-committee passed at the meeting held on 20.1.2007. It is also submitted that by resolution No.10(2) dated 20.8.2005 of the APMC, the power to grant licences under Section 27 is delegated to the licence sub-committee and that such delegation is permissible under Section 25 of the Act. It is also submitted that the petitioners have raised disputed questions of fact about justification for grant of licences and that such an inquiry is not permissible in petitions under Article 226 of the Constitution.

It is also stated that the APMC Kalavad or its Chairman did not receive the election program stated to have been sent by the Director on 18.1.2007 and that for the first time the Election program came to be received by the APMC and its Chairman only in February 2007 by which time the Director of Agricultural Marketing and Rural Finance had provided for another program as against the earlier program stated to have been sent on 18.1.2007. Hence, the licences issued on 20.1.2007 were not issued after commencement of the election process.

7. Mr Champaneri and Mr DB Rana for many of the respondents who were granted licences as per the licence sub-committee resolution dated 20.1.2007 have supported the submissions of Mr Patel for APMC.

8. As far as the authorities are concerned, Mr Mihir Joshi, learned Addl. Advocate General with Ms Trusha Patel, learned AGP has submitted that the Election officer has no power or jurisdiction to go behind the licences issued by the APMC and that the legality or validity of the licences granted by the APMC cannot be the subject matter of any scrutiny by the Election Officer at the time of considering objections against the preliminary voters' list or revised preliminary voters' list nor at the time of scrutiny of

nomination forms of candidates.

8.1 It is submitted by the learned Addl. Advocate General that the procedure for grant of licences by the APMC is already prescribed in Section 27 read with Rule 56 and the forms have been prescribed for such applications. Hence the APMC is required to make inquiry about the identity as well as solvency of the applicant, about his place of business and whether the applicant's business activity will impede the functioning of the APMC or will make it smoother. Any person aggrieved by the grant of licence by the APMC or its licence sub-committee will have the remedy of bringing it to the notice of the APMC under sub-section (3) of Section 27 and in case the APMC rejects such representation, the aggrieved person can still move the Director of Agricultural Marketing and Rural Finance under sub-section (4) within 30 days of the decision of the APMC and the Director will have to decide such appeal/representation after hearing the applicant and the APMC as well as the licence holders in case the appeal is against grant of licence.

8.2 It is, therefore, submitted by the learned Addl. Advocate General that depending on the number of applications to be considered by the APMC on its own or by the licence sub-committee, while the first stage of scrutiny of applications for licence may take anywhere from a fortnight to a month, the second stage of the aggrieved person making a representation to APMC against grant of licences and consideration of such representation and decision thereon will also take about one month from the date the APMC publishes the names of persons to whom traders' licences are granted. Thereafter sub-section (5) of Section 27 gives one month's time to the aggrieved person to file appeal against such decision of APMC. Thereupon appellate authority i.e. the Director of Agricultural Marketing and Rural Finance having

jurisdiction over 182 APMCs all over the State will also take at least two months' time to decide the appeal after hearing all the affected parties.

It is, therefore, submitted by the learned Addl. Advocate General that between the date of APMC granting traders' licences and the date on which the APMC will send the names of the licence holders to the Election Officer for the purpose of preparing a preliminary voters' list for the constituency of traders' holding general licences, there will have to be a gap of at least about 4 to 6 months.

8.3 It is further submitted by the learned Addl. Advocate General that it would not be possible for the Election officer to hold a fact finding inquiry whether the voters were genuine traders or not. There may be small traders who may not be maintaining regular book of accounts or who may not be required to pay market cess if they are purchasing agricultural commodities in which they are dealing, through a licenced commission agent. It is, therefore, submitted that if the Election Officers who are officers in the office of the Registrar, Cooperative Societies or other Government departments are required to examine such factual controversies whether the persons whose names are included in the list of voters are really carrying on trade in the agricultural commodities or whether they are merely holding licences and are not genuine traders, it would be casting unnecessary and unwarranted burden on the Election Officers. There are 182 APMCs in the State and each APMC has three different constituencies – (i) eight agriculturists who shall be elected by members of managing committees of cooperative societies (other than cooperative marketing societies) dispensing agricultural credit in the market area, (ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences, and

(iii) two representatives of the cooperative marketing societies situate in the market area and holding general licences, to be elected from amongst the members of such societies by the members of the managing committees of such societies. There are hundreds, if not thousands of voters for elections to one APMC and if the Election Officer is required or even expected to go behind the licences issued by the APMC and to make detailed fact finding inquiry as to whether a person holding a trader's licence is really carrying on trade or not would place immense burden on the Election Officers who are officers in the Cooperation Department of the State Government on whom otherwise also many other heavy responsibilities are placed for enforcing the provisions of the Gujarat Cooperative Societies Act, 1961 in respect of tens of thousands of cooperative societies all over the State.

8.4 On facts, the learned Addl. Advocate General has referred to the affidavit of respondent No.3 - District Registrar stating that he had not conveyed to respondent No.5 the first election program declared on 17.1.2007 or about his communication dated 10.1.2007.

Statutory Scheme and Departmental Instructions:

9. The relevant provisions of the APMC Act read as under :-

2. Definitions:

(ix) “licence” means a licence granted under section 6 or, as the case may be, a general or special licence granted under section 27;

(xxiii) “trader” means any person, who carries on the business of buying or selling of agricultural produce or of processing of agricultural produce for sale and includes a cooperative society, joint family or an association of persons, whether incorporated or not, which carries on such business;

8. Operation in market under Licence – No person shall operate in the market area or any part thereof except under and in accordance with the conditions of a licence granted under this Act.

11. Constitution of market committee – (1) Every market committee shall consist of the following members, namely:-

(i) eight agriculturists who shall be elected by members of managing committees of cooperative societies (other than cooperative marketing societies) dispensing agricultural credit in the market area;

(ii) four members to be elected in the prescribed manner from amongst themselves by the traders holding general licences;

(iii) two representatives of the Cooperative marketing societies situate in the market area and holding general licenses, to be elected from amongst the members (other than nominal, associate or sympathiser members) of such societies by the members of the managing committees of such societies;

Provided that where the number of cooperative marketing societies so situate does not exceed two, only one representative shall be so elected;

(iv) one member to be nominated by the local authority within whose jurisdiction the principal market yard is situated from amongst it councillors or, as the case may be, members who do not hold any general licence.

Provided that ....

(v) two members to be nominated by the State Government;

Provided that .....

(2) ... .

(3) ... ...

(4)(a) The term of office of a market committee shall, save as otherwise provided in this Act, be four years from the date of its first general meeting.

(aa) The State Government may, by order published in the Official Gazette and for reasons to be recorded therein, extend the said term for a period not exceeding one year in the aggregate.

(b) Save as otherwise provided in this Act, the term of office of the members of the market committee shall be co-extensive with the term of the market committee and also shall be deemed to extend to and expire with the day immediately before the date of appointment of an Administrator under clause (a) of sub-section (5).

(5) ... ...

25.Appointment of sub-committee and delegation of powers :- (1) A market committee may appoint one or more sub-committees consisting of such number of its members as it may determine, for carrying out any work or to report to it on any matter.

(2) A market committee may delegate to any one or more of its members or to any such sub-committee such of its powers and duties as it may deem necessary.

27. Licences, their issue, renewal, suspension or cancellation etc. and appeals against refusal, suspension etc. of licence : -

(1) On the establishment of a market Committee may, subject to rules, made in that behalf, grant or renew a licence or a special licence for the purpose of any specific transaction or transactions to a trader, general commission agent, broker, weighman, surveyor, warehouseman or any person to operate in the market area or part thereof or after recording its reasons therefor, refuse to grant or renew any such licence.

(2) Licences may be granted under sub-section (2) in such forms, for such periods, on such terms and conditions an restrictions (including any provision for prohibiting brokers and commission agents from acting in any transaction both as buyer and seller, or on behalf of both the buyer and seller, and provision for regulating advances, if any, to be made to agriculturists by brokers, commission agents or traders and any provision for prescribing the manner in which and the places at which auctions of agricultural produce shall be conducted and the bids made and accepted and places at which weightment and delivery of agricultural produce shall

be made in any market area) as may be prescribed or determined by the bye-laws and on payment of fees determined by the market committee within such maxima as may be prescribed.

(3) A market committee may, for reasons to be recorded in writing suspend or cancel a licence, -

(i) if the licence has been obtained through willful misrepresentation or fraud, or

(ii) if the holder thereof or his servant or any person acting on his behalf with his express or implied permission, commits a breach of any of the terms, conditions, or restrictions imposed by the licence,or

(iii) if the holder of the licence has been adjudged an insolvent and has not obtained his discharge, or

(iv) if the holder of the licence is convicted of any offence under this Act:

Provided that no licence shall be suspended or cancelled unless the holder thereof has been given a reasonable opportunity to show cause against such suspension or cancellation.

(4) If in respect of any holder or license, it appears to the Director that on any ground specified in sub-section (3) an action under sub-section by the market committee was necessary but that the market committee has not taken any such action, the Director may, on any such ground and for reason to be recorded in writing and after giving a reasonable opportunity to the holder of the licence to be heard, by order suspend or cancel any licence granted or renewed under this section.

(5) Any person aggrieved by an order refusing to grant or renew a licence or suspending or cancelling any licence may, appeal within thirty days from the date of communication of the order to him -

(i) to the Director, if such order has been made by a market committee, and

(ii) to the State Government, if such order has been made by the Director.

(6) The Director or as the case may be, the State Government after giving the appellant a reasonable opportunity of being heard, shall on such appeal make such order as is deemed just and proper.

10. The relevant provisions of the APMC Rules, read as under:-

2. Definitions:

(4) "Election Officer" means an Officer authorised by the Director to perform the functions of an Election Officer under these rules and where no officer is so authorised the Director.

(8) "year" - (a) in relation to a market committee means a period of twelve months commencing on the first day of April and ending on the thirty first day of March; and (b) in relation to the Board means a period of twelve months commencing on the first day of April and ending on the thirty first day of March."

4. Fixation of date of election.- Wherever a general election to a market committee or a bye election under section 15 is to be held, the Director shall, by an order in writing, fix a date of such election and publish such order by affixing a copy thereof in the office of the market committee and at a conspicuous place in the principal market yard in the market area.

5. Different lists of voters.- For the purposes of section 11, there shall be in respect of a market committee three separate lists of voters in Gujarati as follows, namely :-

(1) .. ..

(2) under clause (ii) of sub-section (1) of section 11 of the Act a list of traders holding general licences in the market area;

(3) ... ...

6. Persons qualified to vote.- A person whose name is entered in a list of voters shall be qualified to vote at an election to which the list of voters relates, unless he has ceased to hold the capacity in which his name was entered in such list.

7. Preparation of list of voters for general election.- (1) Whenever a general election to market committee is to be

held:-

(i) ... .

(ii) the market committee shall communicate the full names of the traders holding general licenses in the market area together with the place of residence of each such trader; and

(iii) ....

to the authorised officer before such date as the Director may by order fix in that behalf;

Provided that the date to be so fixed shall not be later than sixty days before the date of the general election.

(2) The authorised officer shall within seven days from the date fixed under sub-rule (1) cause to be prepared the lists of voters as required by rule 5 on the basis of the information received under sub-rule (1) and, if necessary, after making such inquiry as he may deem fit.

(3) Every list of voters shall show the full name, place of residence and the serial number of each voter.

Rule 8 provides for publication of the provisional list of voters along with a notice inviting objections against inclusion or exclusion within 14 days from the date of the publication of notice. After considering such objections, the authorised officer shall publish revised draft list of voters along with a notice inviting objections within 7 days against any new name entered in this list. After considering such objections, the final list of voters shall be prepared at least 30 days before the date fixed for the nomination of candidates for election.

Rule 10 provides for the Director fixing stages of election. Sub-rule (2) thereof provides that not less than 40 days before the date fixed for election, the Director shall publish a notice containing the election program.

Rules 11 to 22 provides for nomination and other stages

of elections.

Rule 27 provides for publication by the Director of Agricultural Marketing and Rural Finance of the names of elected and nominated members of the market committee in the official gazette.

Rule 28 provides for election machinery in the following terms:-

> **28. Determination of validity of election**. -
>
> (1) If the validity of any election of a member of the Market Committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers such person may, within seven days after the date of the declaration of the result of the election, apply in writing :-
>
> (a) to the Director, if the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer, and
>
> (b) to the State Government if the election has been conducted by the Director as an Election Officer and
>
> (2) On receipt of an application under sub-rule (1), the Director, or the State Government, as the case may be, shall, after giving an opportunity to the applicant to be heard and after making such inquiry as he or it, as the case may be, deems fit, pass an order confirming or amending the declared result of election or setting the election aside and such order shall be final. If the Director or the State Government as the case may be sets aside the election, a date shall be forthwith fixed, and the necessary steps be taken for holding a fresh election for filling up the vacancy of such member.

11. Apart from the above provisions of the Act and the Rules, we may also refer to the instructions issued by the Director of Agricultural Marketing and Rural Finance as far back as on 28th September 1995. The gist of the said directions as contained in the above circular is as under :-

> "The Director of Agricultural Marketing and Rural Finance clearly acknowledges that very often objections are received by the Election Officer against the provisional Voters List in the Traders Constituency on the ground that the persons recently granted licences are not genuine traders and that their claim as traders be scrutinized. However, on account of the election deadline and administrative constraints, it is not possible to verify in all cases - whether the persons included in the provisional Voters List are really carrying on trading activities; whether a person is carrying on trading activity or not – will have to be determined on the basis of various facts such as whether the licence holder is paying market cess fee to the Market Committee or not. Hence, it is not proper for the Market Committee to send names of all the licence holders for inclusion in the Voters List.
>
> The Secretary of the APMC shall certify that the licence holders to be included in the Voters List are carrying on the trade."

12. While examining any challenge to the voters' list, the Election Tribunal will have the jurisdiction to examine only those questions which the election officer had the authority to examine. The next question, therefore, would be whether the election officer has any jurisdiction or authority to go behind the licences granted by the APMC or its licence sub-committee. An analysis of the scheme of the relevant provisions of the APMC Act and the Rules does indicate that the Election Officer or the Election Tribunal are not vested with any jurisdiction to go behind the general licences for traders issued by the APMC or its authorised sub-committee and that the matters pertaining to grant, renewal, refusal, suspension and cancellation of licence are governed exclusively by the

provisions of Section 27 of the Act read with Rule 56. Such disputes can only be decided by the APMC and finally by the Director/State Government under Section 27 read with Rule 56. Hence, if APMC grants licence on the eve of elections, very little time will be available to any person intending to challenge the grant of licence on the ground that the licence has been obtained through a wilful misrepresentation or fraud or that the licensee has been convicted of any offence under the Act or even in case of renewal of licence that the licensee has committed a breach of any terms and conditions or restrictions imposed by the licence. Rule 56 of the APMC Rules provides that any person desiring to obtain a licence to do business as a trader or a general commission agent in agricultural produce in any market area or part thereof has to make a written application in such form as the APMC may determine. Thus all the information as required by the form will have to be furnished by the applicant along with the fees prescribed by the market committee. On receipt of such application, the market committee is expected to make necessary inquiries which would also mean that as per sub-rule (3) of Rule 56, the APMC or its licensing committee has to form an opinion that the applicant is not insolvent, that the applicant's operations in the market area are likely to further efficient working of the market and that the operations of the applicant are not likely to impede the smooth working of the market under the control of the APMC. The APMC or its licensing sub-committee having powers delegated to it under Section 25 is thus not to grant licences merely on applications being made and the prescribed fees of Rs.100 or maximum Rs.200 being paid by the applicant. When such licences are granted in hundreds even after commencement of the election process upon declaration of the date of elections, it will be impossible for any authority to verify before finalization of the voters list for the ensuing elections all the claims and counter claims about the genuineness of each applicant's so-called desire to carry on his

business or about the factual aspect whether persons included in the list of voters are really carrying on trading activities in the agricultural commodities concerned in the APMC area.

At this stage, we may also record the submission of the learned Addl. Advocate General that the State Government is not averse to a harmonious construction of the provisions of the Act and the Rules being adopted in such a manner that persons who are granted licences after the date of declaration of the elections are not to be included in the voters list. This stand is also consistent with the stand adopted by the State Government as reflected in para 5 of the order dated 27.2.2007 in Special Civil Application No.5029 of 2007, which reads as under:-

> "5. Mr Nanavati, learned AGP submitted that with a view to see that there may not be any artificial majority in election in larger public interest, the instructions were issued not to grant fresh licence."

Considering the time frames provided for in Section 27 and Rule 56, when a person makes an application under the said provisions for general licence for traders, the APMC or its licensing committee would be expected to take some time in making genuine scrutiny of the application and if there are a large number of such applications, the APMC would naturally take about a month's time to make such scrutiny. If the APMC has granted or renewed a licence and another person is aggrieved by such grant or renewal of licence, his remedy is to move the market committee under sub-section (3) of Section 27 to cancel the licence on any of the grounds indicated in the said sub-section. The market committee will then give reasonable opportunity to the parties and then take a decision in the matter. In case the APMC accepts the representation for cancellation, then the person in whose favour licence was issued

may approach the Director of Agricultural Marketing and Rural Finance under sub-section (4) of Section 27 and then the Director would have to give a reasonable opportunity of hearing and decide whether to suspend or cancel any licence granted or renewed by the APMC or its delegate licensing sub-committee.

If the APMC refuses to grant or renew a licence, the aggrieved applicant has his remedy under sub-section (5) of Section 27 to move the Director within a period of one month from the date of refusal.

In either case, the Director would thereafter be expected to take at least about two months to decide because the Director of Agricultural Marketing and Rural Finance is in charge of the entire administrative machinery supervising the implementation of the APMC Act and the Rules in respect of as many as 182 APMCs in the entire State where business worth thousands of crores is being carried on in various agricultural commodities. Hence, the time gap between the date of grant/renewal or refusal of general licence for traders under Section 27(1) read with Rule 56(1) and the date when the APMC has to send the list of voters to the Election Officer under sub-rule (1) of Rule 7 would have to be a period of at least 4 to 6 months, if disputes about grant, renewal or refusal of licence have to be decided by the competent authority before preparation of the voters list.

13. We find considerable force in the submissions of Mr Mihir Joshi, learned Additional Advocate General and the learned counsel for the petitioners that the remedy provided by Rule 28 of the Rules is limited to the extent that election officer and the Election Tribunal will only examine the challenge to exclusion or inclusion of certain persons in the list of voters for the constituency

of traders holding general licences under clause (ii) of sub-section (1) of Section 11 of the Act only with the limited aspect whether they were traders holding general licences. The Election Tribunal is not vested with any jurisdiction to examine whether the licence was granted in accordance with the relevant provisions of the Act and the Rules. On the contrary, the matter is to be decided only by the APMC and the Director under the provisions of sub-sections (4) and (5) of Section 27 of the Act. In the election petition under Rule 28, there cannot be any collateral challenge to the grant, renewal, refusal, cancellation or suspension of general licences of traders.

14. Having examined the scheme of the Act and the Rules and in view of our finding that the Election Officer and the Election Tribunal have no jurisdiction to examine the challenge to grant, renewal, refusal, suspension or cancellation of a trader's licence and that such challenge will have to be considered by the competent authorities under sub-sections (3), (4) and (5) of Section 27 of the APMC Act after making proper scrutiny and after giving an opportunity of hearing to the affected parties and that the aggrieved person is also given time of 30 days to challenge the decision refusing to grant or to renew a licence, the persons who are granted licence at such a time cannot claim a right to participate in the election when there is not sufficient time for challenge to such grant or renewal of licence or the challenge to refusal of licence prior to the date when the APMC sends the list of voters to the Election Officer. What would be sufficient or reasonable time for this purpose ? According to the petitioners and even according to the learned Additional Advocate General such time limit would not be less than four to six months prior to the date of sending the list of voters by the APMC to the Election Officer.

15. While accepting the submissions made by the learned

Additional Advocate General as well as the learned counsel for the petitioners that in the instant case the time gap between the date of declaration of the date of elections and the date on which the APMC sent the list to the Election Officer was certainly inadequate for the purpose of any challenge being levelled against the grant of a large number of licences in the intervening period (which was hardly about two months), this Court will not be in a position to lay down any cut-off date prior to such date of commencement of the date of elections to APMC because it would be a policy matter to be decided by the Legislature / the rule making authority.

16. It is also required to be noted that earlier the accounting year for the APMC was 1st October to 30th September and the licences to traders and others were being granted for such period. However, the definition of year in Rule 2(8) has now been amended so as to read as under:-

> "**2(8) "year**" - (a) in relation to a market committee means a period of twelve months commencing on the first day of April and ending on the thirty first day of March; and (b) in relation to the Board means a period of twelve months commencing on the first day of April and ending on the thirty first day of March."

Accordingly, the accounting year for APMC and its traders shall also be April to March.

17. The APMC may, therefore, also provide that the applications for renewal shall be made before expiry of the year i.e. application for year 2008-09 may be made by 31.03.2008 in which case the amount of fees would be X (say, Rs.50), but if the application for renewal is made between 01st April and 31st May, 2008, the fees would be Y (say, Rs.125) and that if the application for renewal is made between 01st June and 30th September, 2007 the fees shall be Z (say, Rs.200).

The rules may also provide that any applications for renewal of licence after 30th September of the relevant year immediately preceding the date of expiry of the term of the concerned APMC shall not be entertained and that if entertained, the applicant will not get any right to vote at the next election.

It would be open to the legislature / the rule making authority to provide that a person getting general licence for traders will not be eligible to participate in or to vote at the elections to APMC if a period of X months has not elapsed between the date or month or year in which licence was granted and the date on which the APMC is to send the list of voters to the election officer or the rules may provide that the persons who are granted licences for the first time in a particular financial year ending 31st March will not be permitted to participate in the elections to be held in the next financial year. For instance, if a person has obtained licence in March 2007, he may not be permitted to participate in the elections of the APMC to be held between 01.04.2007 and 31.03.2008, but if the elections are to be held in May 2008 and the list of voters is to be prepared in March 2008, certainly the names of such persons may be included in the list of voters for elections to be held in May 2008.

18. All these are some of the possible ways of ensuring that the elections to APMC are held in accordance with democratic principles and there is no last minute attempt to inflate or project artificial majority. Ultimately, it is for the Legislature/ Rule making authority to take a policy decision in the matter.

19. Coming to the facts of the case, a perusal of the report dated 23.3.2007 submitted by a five member official team headed by the Cooperation Officer (Admn.) and of the subsequent report

dated 29.3.2007 of the District Registrar of Cooperative Societies to the Director of Agricultural Marketing and Rural Finance makes it very clear that the outgoing office bearers of the market committee i.e. APMC had gone for all out drive for indiscriminately granting general licences for traders to a large number of persons including 185 fresh general licences for vegetable vendors and 84 fresh licences for food grain traders – none of whom had ever applied for or been granted such licence in the previous years 2004-05 or 2005-06. A large number of such applications were not only received on the same date, but were also filled in in the same handwriting and were not received by Inspectors of the market committee, but by the gate clerk. The so-called scrutiny report of such applications of 293 applicants for licences was not submitted by the Secretary of market committee or any of its Inspectors, but by gate clerk VS Savalia. Most of the 223 applications received in January 2007 were in the same handwriting. This damning report dated 23.3.2007 by an independent team of Government officials, which has also been accepted by the District Registrar of Co-operative Societies (the Director of Agricultural Marketing and Rural Finance has, however, preferred not to express any opinion as stated by the learned Addl. Advocate General) is further supported by the shocking revelation that licence was issued in favour of a person who had never applied for a licence. A licence was issued in favour of one Sanjaysinh B Jadeja of village Khandera who had never applied for the licence. Similarly, a licence was issued in favour of Govindhbhai Gordhanbhai purporting to be a resident of village Khandera but there was no such person in the village Khandera as per the certificate issued by the Khandera gram panchayat. It was after production of such documentary evidence that an affidavit dated 2.4.2007 came to be filed by one Rajendrasinh B Jadeja of Khandera stating that his application for licence was filled in by some other person and by mistake his name was mentioned as Sanjay singh instead of Rajendra Singh.

Similarly, another affidavit dated 2.4.2007 has been filed by Govindbhai Gordhanbhai stating that he was residing at village Nagpur but by mistake in the application form he was shown as residing at village Khandera.

The contents of the above report dated 23.3.2007 of the official team headed by the Cooperation Officer (Admn.) and the report dated 29.3.2007 of the District Registrar of Cooperative Societies to the Director of Agricultural Marketing and Rural Finance, and the aforesaid affidavits make it clear beyond any shadow of doubt that the decision of the licence sub-committee on 20.1.2007 for issuing a large number of licences, as many as 293, was not only contrary to the statutory provisions contained in Section 27 of the AMPC Act and Rule 56 of the APMC Rules but the resolution was passed only in order to give artificial majority to the outgoing Chairman of the APMC. In fact when the said resolution was placed before the meeting of the Market Committee (APMC) on 25.3.2007, the Committee refused to ratify the resolution dated 20.1.2007 of the licence sub-committee. Not only the eight elected members of the APMC (out of 13 such elected members) but even two nominated members refused to ratify the resolution dated 20.1.2007 of the licence sub-committee.

20. As regards the submission made by Mr BS Patel, learned advocate for the APMC that licences were not issued after declaration of the date of election to APMC, the contention is being stated only to be rejected. The authorities i.e. Respondent Nos.1 to 3 do admit that on 10.1.2007 the Deputy Director of Agricultural Marketing and Rural Finance (respondent No.3) who is also District Registrar of Cooperative Societies, Jamnagar and also a member of the APMC Kalavad nominated by the State Government had sent the communication to the Director at Gandhinagar with the proposed election program and that the Director had issued

election program under Rule 4 of the APMC Rules on 17/18.1.2007. On the basis of these facts, it would not be unreasonable to draw the inference that respondent No.5 herein (Chairman of the APMC, Kalavad) was aware of the proposed election program on the date of issuance of the agenda on 13.1.2007 convening the meeting of the licensing sub-committee headed by respondent No.5 himself on 20.1.2007 and that on 20.1.2007 also respondent No.5 in his capacity as Chairman of APMC and Chairman of the licensing sub-committee was aware of the election program declared on 18.1.2007. Merely because by subsequent order made on 1.2.2007, the Director varied the election program and the dates for different stages of election were postponed by about three weeks, the fraud on the election process perpetrated by issuance of as many as 293 licences on 20.1.2007 including 279 fresh licences after issuance of the order by the Director of Agricultural Marketing and Rural Finance on 17/18.1.2007 fixing dates for various stages of election process cannot be underplayed by accepting the contention that the order scheduling the first election program on 18.1.2007 fixing 14.5.2007 as the date of polling was varied, or even substituted, by the subsequent order issued on 1.2.2007 scheduling 5.6.2007 as the date of polling and accordingly postponing the other prior stages of election process.

21. In view of the above material on record and in view of the fact that the meeting of the licence sub-committee was convened on 20.1.2007 after the Dy. Director for Agricultural Marketing and Rural Finance had sent a communication dated 10.1.2007 for fixing the date of election and the Director of Agricultural Marketing and Rural Finance had already declared the election program on 17/18th January 2007 (which program was subsequently merely varied by postponing the date of polling and the other stages of election) and having examined the scheme of the Act and the Rules, we have no manner of doubt in holding that

the resolution dated 20.1.2007 of the licence sub-committee for granting as many as 293 licences (269 fresh licences) was not only illegal but also a fraud on the election process. As held by the Hon'ble Apex Court in Election Commission of India vs. Ashok Kumar, 2000 (8) SCC 216, without granting stay on the election process, this Court can intervene for the purpose of strengthening the democracy and for removing the obstacles to the fair election process. In our view, therefore, this is an extraordinary situation justifying our intervention for the purpose of striking down the resolution dated 20.1.2007 of the licence sub-committee and to direct the respondent-authorities not to permit the persons granted licences pursuant to the said resolution to participate in the elections to APMC Kalavad, Dist. Jamnagar.

22. One of the controversies raised before us was that the licence holders, who had not paid any market cess till date of preparation of the Voters List, should not be included in the Voters List. Mr. B. S. Patel for the APMC vehemently submitted that there are a large number of small traders who purchase the notified agricultural commodities from a Commission Agent who has already paid the Market Cess Fee on the first transaction of purchase and, therefore, subsequent purchasers are not required to pay any Market Cess Fee. This assertion made on the basis of the relevant provisions of the APMC Act and the Rules has not been effectively controverted on behalf of the petitioners or the respondent-authorities. We are, therefore, of the view that the petitioners' contention, that the licence holders, who have not paid any Market Cess Fee between the date of issuance of licence and the date of preparation of the Voters List, should not be included in the Voters List, cannot be accepted. The Election Officer, therefore, cannot be permitted to exclude a licence holder from the Voters List only on this ground.

23. We have examined the submission made by the learned counsel for the petitioners that many of the applicants who were granted licences on 20.1.2007 were related to the Chairman of the APMC. In our view, it is not possible to accept the challenge to the grant of traders licences merely on the ground that the applicants are related to any office bearer or a member of the APMC. The Act does not provide for any such disqualification and we see no reason to accept the contention being urged on behalf of the petitioners. Of course, when challenge to the grant of licences is examined on merits and any doubt is raised about proper scrutiny by the APMC, this question may have some bearing and at the most may warrant some closer scrutiny, but a person cannot be disqualified to apply for a licence merely on the ground that he is related to an office bearer or a member of the APMC. Even otherwise, since we are taking the view that the licensing sub-committee has passed resolution dated 20.1.2007 for grant of 293 licences without any scrutiny only for the purpose of providing for artificial majority for the outgoing Chairman of the APMC who is also the Chairman of the licensing sub-committee, the submission needs no further examination. But obviously, persons whose names were already included in the voters' list on the basis of licences issued prior to the date of commencement of the process of scheduling the election program, cannot be prevented from participating in the elections merely on the ground that they are related to any office bearer or member of the APMC.

24. Another issue raised by the learned Advocate for the APMC was that cases of renewal of licences would stand on a different footing from the cases of issuance of fresh licences and that this Court should not strike down the Resolution dated 20.01.2007 insofar as issuance of licences resulted into renewal of licences.

On the face of it, the submission appears to be both reasonable and attractive but it cannot be accepted because under the provisions of Section 27 read with Rule 56, renewal of licence is not a mere formality. In the first place, even after commencement of the financial year of the Market Committee in April 2006, the licence holders had not made any application for more than six months or for almost nine months. In fact at the hearing of Special Civil Application No.5029 of 2007 on 27.2.2007 (filed by some persons whose pending applications for grant/renewal of licences were not being decided), the stand of the APMC was as under:-

> "Mr BS Patel, learned counsel appearing for the Market Committee, submitted that fresh licence cannot be granted and so far as the case of renewal is concerned, as per his instructions, those petitioners had not applied for renewal of licence prior to the expiry of the licence and not only that more than reasonable time had expired and thereafter, when they realised that the election is ensuing, the applications are made."

The APMC cannot be permitted to approbate and reprobate.

Secondly, Section 27 (3) read with Rule 56 clearly indicates that the Market Committee will have to be satisfied that the licence holder applying for renewal has not committed breach of any of the terms and conditions or restrictions imposed by the licences, that the holder of the licence has not been adjudged as an insolvent who has not obtained his discharge and that the holder of the licence is not convicted of any offence under the APMC Act. The APMC or its Licencing Sub-Committee cannot, therefore, issue a licence so as to renew any existing licence without making necessary inquiry for satisfying itself that the application for renewal of licence fulfills the above conditions.

The manner in which the so called Scrutiny Report of the applications, including the applications for renewal, was made by a mere gate clerk after a long period and absence of any scrutiny by an authorized and responsible officer of the APMC cannot give premium to the case of the applicants who had been granted licences for the year 2005-06, but who did not apply for renewal before the expiry of the licence or within a reasonable period thereafter and whose applications were taken up for consideration after the date of declaration of the elections to the APMC.

25. In **Election Commission of India vs. Ashok kumar, (2000) 8 SCC 216**, the Apex Court has laid down the following principles in paragraphs 28 and 32 of the judgment :-

> "28. Election disputes are not just private civil disputes between two parties. Though there is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial. Whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes.
>
> 32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :-
>
> 1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the

completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

(emphasis supplied)

26. The present case certainly falls in the category of extraordinary situations wherein the writ jurisdiction will have to be exercised for the welfare of the constituency of the traders and for strengthening the democracy. The Resolution dated 20-01-2007 was a clear attempt to subvert the fair election process and,

therefore, this Court merely proposes to correct the progress of the election proceedings by removing the attempt of the outgoing office bearers of the APMC to subvert the election process by creating an artificial majority in the constituency of traders holding general licences under clause (ii) of sub-section (1) of Section 11 of the APMC Act.

27. We may now deal with the decision of the Full Bench heavily relied upon by Mr. B. S. Patel for the APMC in **Daheda Group Seva Sahakari Mandali Limited** *(supra)* decided on 27.4.2005. The following questions were referred to the Full Bench in the context of elections to the APMCs and the scope of Rule 28 of the APMC Rules constituting the Election Tribunal for deciding disputes relating to elections to APMCs:

I. Whether a person whose name is not included in the Voters' List can avail provisions of Rule 28 of the rules by filing election petition?

II. Whether the remedy under Rule 28 can be termed to be efficacious remedy?

III. Whether a petition under Article 226 of the Constitution of India is maintainable in an election process challenging an order issued by the Election Officers i.e. inclusion or deletion of the names of the voters in the Voters' List?

After considering various decisions of the Apex Court and also the decisions of various Benches of this Court, the Full Bench answered the Reference as under:

I. A person whose name is not included in the voters' list can avail benefit of provisions of Rule 28 of the Rules by filing Election Petition.

II. As the authority under Rule 28 has wide power to cancel, confirm and amend the election and to direct to hold fresh election in case the election is set aside, remedy under Rule 28 is an efficacious remedy.

III. Even though a petition under Article 226 of the Constitution of India is maintainable though alternative remedy is available, the powers are to be exercised in case of extraordinary or special circumstances such as where the order is *ultra vires* or nullity and / or *ex facie* without jurisdiction. The exclusion or inclusion of names in the voters' list cannot be termed as extraordinary circumstances warranting interference by this Court under Article 226 of the Constitution of India and such questions are to be decided in an Election Petition under Rule 28 of the Rules.

28. Reading the entire decision of the Full Bench reveals that the question in the context of which the Full Bench was called upon to consider the controversy about maintainability of the petition was whether a member of the Managing Committee of a particular cooperative society was entitled to vote in his capacity as a member of the managing committee of such cooperative society and not merely by virtue of inclusion or deletion of his name in/from the voters list. The contention of the authorities in the said case was that the election petition under Rule 28 provides remedy for resolution of all facets of the dispute as to whether the name of a person being the member of the Managing Committee of a particular cooperative society should be permitted to participate in the election if he ceases to hold the post on the date of the election program. Similarly the question whether a particular cooperative society is dispensing agricultural credit or not would be ordinarily be a disputed question of fact. There cannot, therefore, be any dispute with the proposition that ordinarily the exclusion or inclusion of names from/in the voters' list can be challenged in an election petition under Rule 28 of the Rules, after the elections are held. But the Full Bench also held that the powers of this Court under Article 226 of the Constitution may be exercised in case of extraordinary or special circumstance such as where the order is ultra vires or nullity and/or ex-facie without jurisdiction. The Full

Bench also followed the principles laid down by the Apex Court in Election Commission of India vs. Ashok Kumar, 2000 (8) SCC 216 and Manda Jaganath vs. K S Rathnam, AIR 2004 SC 3600 laying down that any decision in the election process is open to judicial review on the ground of mala fide or arbitrary exercise of powers and that special situation justifying exercise of writ jurisdiction would mean correcting an error having the effect of interfering in the free flow of the scheduled election or error having the effect of hindering the progress of election.

29. After the above decision of the Full Bench rendered on 27.4.2005, in Pundlik vs. State of Maharashtra, decided on 25.8.2005 and reported at 2005 (7) SCC 181, the Apex Court held that though preparation of list of voters is one of the stages of election and that normally the High Court would not interfere in exercise of powers under Article 226 of the Constitution at the stage of preparation of list of voters, but such action must be in accordance with law. In the said decision, the Apex Court distinguished their decision in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Santha vs. State of Maharashtra, 2001 (8) SCC 509. In Shri Sant Sadguru's case objections against publication of provisional electoral roll of the Society were filed which were considered by the Collector and disposed of. The final electoral roll was published on 2.7.1999. Election program was drawn by him on 21.10.1999. Thereafter the petitioner filed a writ petition in the High Court for quashing the election program and the Apex Court held that the High Court should not stay continuation of the election process even though there may be some alleged irregularity or breach of the Rules while preparing the electoral roll. However, in the Pundlik case, the original petitioner had taken immediate action on receiving the fax message from the Collector.

30. In the instant case also, soon after the publication of the preliminary list of voters on 13.3.2007 which was merely based on issuance of licences including issuance of 293 licences by the licensing sub-committee on 20.1.2007 after declaration of the date of election on 10.1.2007 and declaration of the first election program on 18.1.2007, the petitioner has challenged the resolution dated 20.1.2007 upon coming to know about issuance of fresh licences to a large number of persons, which fact came to the notice of the petitioners only upon publication of the preliminary list of voters in March 2007. Apart from the present challenge, another aggrieved person preferred an appeal before the Director of Agricultural Marketing and Rural Finance. During pendency of the said appeal, the aforesaid official reports dated 23.3.2007 and 29.3.2007 critical of the impugned resolution dated 20.1.2007 were received, but the Director is not inclined to take any decision in the said appeal. In absence of any other efficacious alternative remedy against the impugned resolution dated 20.1.2007 after commencement of the election process and in view of the above circumstances, this Court is constrained to exercise its extra-ordinary discretionary jurisdiction to intervene at this stage for the reasons already indicated hereinabove.

Various facts highlighted in the Report dated 23-03-2007 of the Official Committee headed by Co-operation Officer (Administration) and also the subsequent Report dated 29-03-2007 of the District Registrar of Co-operative Societies to the Director of Agricultural Market and Rural Finance, which are already referred to hereinabove, are sufficient to come to the conclusion that the power of issuing the licences to a large number, hundreds of persons, was exercised by the licencing Sub-Committee in an arbitrary and mala fide manner only to give artificial majority to the outgoing office bearers of the Market Committee.

:: O P E R A T I V E O R D E R ::

The petitions are allowed in the following terms :-

(a) The resolution dated 20.1.2007 (Annexure C) passed by the APMC, Kalavad for granting general licences for traders' to 293 persons is quashed and set aside as illegal and a fraud on the election process.

(b) The persons who were granted general licences for traders on or after 10.1.2007 shall not be permitted to participate in the elections to the Agricultural Produce Market Committee, Kalavad for the constituency of traders holding general licenses under clause (ii) of sub-section (1) of Section 11 of the APMC Act, 1963.

(c) The persons who were granted general licences for traders prior to 10.1.2007 shall not be prevented from participating in the elections to APMC, Kalavad and voting at the said elections on the ground that the licences were granted on the eve of elections or on the ground that the licences were granted to the relatives of the members of the APMC or on the ground that the market cess fee was not paid by such persons. The orders of the Authorised Officer and Cooperative Officer (Marketing) in the office of the District Registrar of Cooperative Societies, Jamnagar in relation to the list of voters for the constituency of traders holding general licences in the area of the APMC Kalavad under clause (ii) of sub-section (1) of Section 11 of the APMC Act, 1963 shall accordingly stand modified.

(d) The elections for the constituency of traders holding general licences in the market area of APMC Kalavad, Jamnagar shall be conducted on the above basis.

(e) It is clarified that once the elections to APMC, Kalavad are held and the results are declared, it will be open to any aggrieved party to challenge the election before the Election Tribunal constituted under the APMC Rules, 1965. It will also be open to the aggrieved party to raise all available contentions including the contention about eligibility to vote by the persons whose names were included in the final list of voters for the constituency of traders holding general licences, as modified by this order, but no contention shall be permitted to be raised which runs counter to the above directions.

(f) It is also clarified that this decision does not preclude the persons who were granted licences pursuant to the resolution dated 20.1.2007 of the licensing sub-committee of APMC, Kalavad from applying afresh and on such applications being made, the APMC Kalavad to be constituted after the elections are held on 5.6.2007 or its licensing sub-committee, if so authorised, shall duly consider the same in accordance with law.

Rule is made absolute in each petition in the above terms.

[M.S.SHAH, J.]

[H.B.ANTANI, J.]

zgs/-